



Federal Communications Commission
Washington, D.C. 20554

FEB 29 1996

EX PARTE OR LATE FILED

The Honorable Sam Nunn
United States Senator
75 Spring Street
Suite 1700
Atlanta, Georgia 30303

In Reply Refer to:
9600850

DOCKET FILE COPY ORIGINAL

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MAR - 4 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Senator Nunn:

Thank you for your letter of February 9, 1996, on behalf of your constituent, Christopher G. McCann, with 1-800-FLOWERS, concerning the issue of 888 numbers.

In October 1995, the Commission initiated a rulemaking proceeding to smooth the transition to an expanded set of toll free service access codes starting with 888. This proceeding was also initiated to continue and to ensure the promotion of efficient, fair, and orderly allocation and use of these limited numbering resources. In a Notice of Proposed Rulemaking (CC Docket No. 95-155, FCC No. 95-419) adopted on October 4, 1995, the Commission sought comment on several categories of issues pertaining to the provision and use of toll free service, primarily focused on the efficient management and allocation of toll free numbers. Specifically, the Commission sought comment on the issue with which Mr. McCann is concerned, which is whether current holders of 800 vanity numbers should have a right of first refusal over like numbers in 888. The comments submitted on behalf of Mr. McCann and 1-800-FLOWERS are part of the record in this proceeding.

On January 25, 1996, the Common Carrier Bureau, acting pursuant to delegated authority, adopted a Report and Order (CC Docket No. 95-155, DA 96-69) addressing the reservation of 888 numbers, tariffing issues, 800 and 888 conservation plans, and interim protection of vanity numbers in 888. The Common Carrier Bureau agreed with an industry plan permitting Responsible Organizations, the entities responsible for managing a toll free subscriber's records, to poll their commercial 800 subscribers to determine which numbers subscribers may want replicated in 888 and to submit that information to Database Services Management, Inc. (DSMI), the administrator of the toll free database. The Common Carrier Bureau directed DSMI to place those numbers in "unavailable" status until the Commission resolves whether these numbers ultimately should be afforded permanent special right or protection. Therefore, when early reservation of 888 numbers began on February 10, 1996, those numbers placed in "unavailable" status were not eligible for reservation.

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A copy of the press release regarding the January 25 Report and Order is attached. If your constituent has further questions, he may contact Irene Flannery at 202-418-2373, Brad Wimmer at 202-418-2351, or Mary DeLuca at 202-418-2334, members of the Common Carrier Bureau who are working on the toll free proceeding.

Sincerely yours,

A handwritten signature in black ink that reads "Regina M. Keeney". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Regina M. Keeney
Chief
Common Carrier Bureau

Enclosure



NEWS

News media Information 202 / 418-0500

Fax-On-Demand 202 / 418-2839

Internet: <http://www.fcc.gov>

[ftp.fcc.gov](ftp://ftp.fcc.gov)

**Federal Communications Commission
1919 - M Street, N.W.
Washington, D. C. 20554**

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *WCI v. FCC*, 515 F.2d 395 (D.C. Cir. 1974).

Report No. DC 96-3

ACTION IN DOCKET CASE

January 25, 1996

**COMMON CARRIER BUREAU ACTS TO ENSURE TIMELY DEPLOYMENT OF NEW
TOLL FREE NUMBERS
(CC DOCKET 95-155)**

The Common Carrier Bureau today announced action to resolve certain issues and allow the industry to open the new toll free service access code, 888, on March 1, 1996. This new toll free code is needed because the existing pool of toll free numbers will be exhausted in the near future.

In October 1995, the Commission issued a Notice of Proposed Rulemaking to address certain regulatory issues relating to the introduction of toll free Service Access Codes (SACs). The Commission noted in initiating this rulemaking that, while it has historically left most 800 numbering issues to the industry, this proceeding is necessary to continue to ensure the efficient, fair and orderly allocation of toll free numbers and the responsible use of limited numbering resources in a competitive environment. The Commission stated that its goal in this proceeding is to avoid the situation faced earlier this year: the imminent total depletion of toll free numbers before the industry could make a new toll free code available. The Common Carrier Bureau has also been working with the industry to speed the deployment of this new toll free code, 888. As a result of these efforts, the initial deployment date of April 1, 1996 was moved up by one month.

In light of the recent Federal government furlough and subsequent emergency snow days, the Commission, in an order adopted January 24, 1996, concluded that the most efficient way to ensure that the necessary Commission decisions are made for the March 1 deployment of 888 numbers is to delegate to the Common Carrier Bureau the authority to make them.

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In the Report and Order adopted today, the Bureau adopts the general recommendation of the industry group, SMS/800 Number Administration Committee ("SNAC"), that Responsible Organizations ("RespOrgs"), the entities that provide and assign toll free service numbers, should poll their 800 subscribers to identify which subscribers may want to obtain their corresponding number in 888. Once these numbers have been identified, Database Service Management, Inc. (DSMI), the administrator of the toll free number database, can set these 888 numbers aside from the complete pool of toll free numbers by marking them "unavailable" in the SMS/800 database.

The Bureau narrowed the SNAC plan, requesting RespOrgs to poll only their commercial subscribers and that DSMI should begin to set aside the 888 numbers requests already received from RespOrgs as "unavailable" in the database upon release of this Order. The Bureau does not decide whether any 800 subscriber ultimately should be afforded any special right or protection and defers consideration of this issue to the Commission. Also, because all RespOrg may not have participated in this polling effort, the Bureau encouraged RespOrgs to continue to poll their commercial 800 subscribers and pass these requests onto DSMI no later than 11:59 p.m., eastern standard time, February 1, 1996. DSMI should complete setting aside these 888 numbers by 11:59 p.m., eastern standard time, February 8, 1996. The Bureau also concludes that the entire "888-555" NXX should be designated "unavailable" until the Commission resolves those issues that will permit competitive toll free directory assistance services. With these efforts complete, the Bureau concluded that the remaining 888 numbers should be available on a first come, first served basis. RespOrgs may begin reserving 888 numbers for their subscribers at 12:01 a.m., eastern standard time, February 10, 1996 subject only to a limited conservation plan. Consumers interested in obtaining a toll free number should contact the service provider of their choice.

The Bureau concluded that an initial conservation plan for 888 numbers is necessary to protect the toll free database system from becoming overloaded which could possibly cause a temporary shutdown of the reservation process. The conservation plan adopted in this Order is based on the conservation plan adopted by the Bureau in August, 1995. Instead of capping the numbers being distributed to RespOrgs at 29,000 numbers each week, however, this 888 conservation plan will provide RespOrgs with approximately 120,000 numbers each week. Each RespOrg's weekly maximum allocation of numbers will increase by a factor of 4. Each RespOrg will be able to draw at least 200 888 numbers to meet its customers' demand.

In addition, the Bureau found that a continued limited conservation plan is necessary for 800 numbers until 888 has clearly been successfully deployed and operating on a nationwide basis. The modification to the 800 conservation plan will increase

the weekly allocation for three weeks--- beginning 12:01 a.m. eastern standard time, January 28, 1996 and ending 11:59 p.m. eastern standard time, February 17, 1996. For these three weeks, the 800 allocation will be approximately 73,000 numbers each week. Each RespOrg's weekly allocation will increase by a factor of 2.5. Each RespOrg will be able to draw no fewer than 100 800 numbers in each of these three weeks . On February 18, 1996 the 800 weekly allocation will return to 29,000 numbers.

Finally, the Bureau concluded that, for tariffing purposes, 888 service should be treated like 800 service and that the associated investment and expenses of carriers regulated by price caps should not be given exogenous cost treatment.

Action by the Chief, Common Carrier Bureau, January 25, 1996 by Order (DA 96 69).

-FCC-

News Media contact: Susan Lewis Sallet at (202) 418-1500.

Common Carrier Bureau contacts: Brad Wimmer at (202) 418-2351

Irene Flannery at (202) 418-2373

Mary De Luca at (202) 418-2334

NETWORK SERVICES DIVISION CONGRESSIONAL RESPONSES

DATE 2-26-96 CONGRESSIONAL NO. 9600850

TO: Irene MEMBER: SEN NUNN

CONGRESSIONAL RESPONSES MUST BE PREPARED AS QUICKLY AS POSSIBLE. DRAFT RESPONSES PREPARED FOR THE BUREAU CHIEF'S SIGNATURE ARE DUE IN THE FRONT OFFICE NO LATER THAN TWO FULL DAYS BEFORE THE DUE DATE DESIGNATED ON THE YELLOW TRACKING SHEET; RESPONSES TO BE SIGNED BY THE DIVISION CHIEF SHOULD BE MAILED BY THE DUE DATE; AND, DRAFT RESPONSES PREPARED FOR THE CHAIRMAN'S SIGNATURE ARE DUE IN THE FRONT OFFICE NO LATER THAN THREE FULL DAYS BEFORE THE DUE DATE DESIGNATED ON THE YELLOW SHEET.

1. ~~Have all special instructions been satisfied?~~
2. Due date 3-12-96
3. Alter the release of a congressional response, send an e-mail to Andre Copelin (ACOPELIN) indicating the Congressional Control Number, the Congressional Member's name and the date released. Also give Walker a copy of your e-mail and be sure to return the entire file to him.
4. If an extension of time is needed to finalize a reply, request the extension from Shirley Chisolm in the front office (418-1500). Note the extension date on the yellow tracking sheet.
5. If the Congressional is "Closed out" telephonically, please notify Susan Celled as cited in #3 above. Return the file to Walker.
6. If this Congressional does not belong in our Division, please return to Walker promptly, indicating to whom it might belong.

IMPORTANT:

We are required to hold completed Congressionals for a period of five years. John Walker is the custodian of the Congressionals, therefore return, or arrange for him to receive, the completed original file (or a copy of the entire file) for the records.

John Walker, Rm 6331, 418-2343

From: John Morabito
To: nsd
Date: 2/12/96 7:07pm
Subject: Congressionals

I have been informed by Leslie in the Front Office that the Division can no longer sign Congressionals on behalf of the Bureau Chief. Thus, until you hear otherwise, please prepare Congressionals for Gina's signature. Thanks.

CC: lblosse, klevitz, agomez, mnewman

From: Gloria Shambley
To: FCCMAIL.FCCGROUPS.NSD
Date: 2/21/96 8:26am
Subject: Congressionals

Please remember that congressionals sent to the front office should not include a date. It will probably come back to the division for edits. It should also be printed on blue letterhead.

Thanks. G.

FROM: Lou Sizemore
Office of Legislative Affairs

SUBJECT: White House Correspondence

TO: Bureaus/Offices

The White House forwards to the FCC constituent correspondence for the FCC to prepare the response. The White House instructions on handling the correspondence is: return the original incoming letter with a copy of the response to the White House. When responding to any correspondence forwarded to the FCC from the White House, the following is the correct address to use when returning the response.

Ms. Jennifer McCarthy
Director
Office of Agency Liaison
Room 91
Old Executive Office Building
The White House
Washington, D.C. 20500

From: Lou Sizemore
To: bureau
Date: 11/3/95 10:16am
Subject: White House Correspondence

It appears that the Bureaus/Offices are not following the procedures that were sent to you on several occasions regarding the processing of White House Correspondence. The preference of the White House is for the opening sentence to say "President Clinton has asked me to respond to ...", the White House requests that the original incoming correspondence that is forwarded to the Commission for a response be returned to the White House with a copy of the outgoing response.

STROM THURMOND, SOUTH CAROLINA, CHAIRMAN

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United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

February 9, 1996

CCB
95-155
250

Ms. Judith Harris
Federal Communications Commission
Office of Legislative Affairs
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Harris:

I recently received the enclosed inquiry from one of my constituents. Please review the matter thoroughly, in accordance with established policies and procedures, and provide me with a full report.

I look forward to hearing from you in the very near future.

Sincerely,



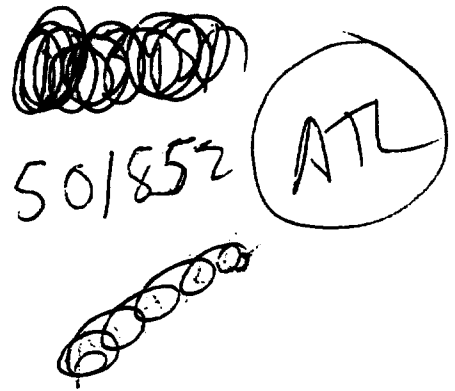
Sam Nunn

SN:tmh

Enclosure

PLEASE REPLY TO:

Office of Senator Sam Nunn
Attn: Papika Howard
15 Spring Street
Suite 1700
Atlanta, Georgia 30303
404/333-4611



December 19, 1995

Senator Sam Nunn
Office of Senator Sam Nunn
SD-303 Dirksen Senate Office Bldg.
Washington, DC 20510-1001

Dear Senator Nunn:

As an active member of the retail community in your district, I am asking for your help on a matter of supreme importance to the welfare of my company, 1-800-FLOWERS. 800 service, the service upon which our business has been built, has been so successful that the industry is currently running out of numbers to issue to new customers. The answer to this problem, decided on by the Telecom industry, is a new toll-free access code, 888. Here is a brief summary of the 888 issue and the challenges it poses to 1-800-FLOWERS.

Our main concern centers around how the issuance of these 888 numbers will be administered. We have been arguing that there must be some recognition by the Telecom industry and the FCC that there are a small number of businesses, such as ours, that have built their business, their name, and their brand around the policies and capabilities of 800 service. The FCC must be very careful not to undermine the successes we have accomplished, the most important achievement being the trust we have with our customers.

We often face would be competitors who try to take advantage of our name and our success by acquiring telephone numbers that are very similar to our 1-800-FLOWERS (1-800-356-9377) number; however, all of these occurrences we have experienced to date pale in comparison to what we may face if a competitor were to gain the use of 888-FLOWERS. This competitor then would be able to undermine our franchise and gain market share from us simply by confusing our customers.

Senator Nunn
December 19, 1995
Page Two

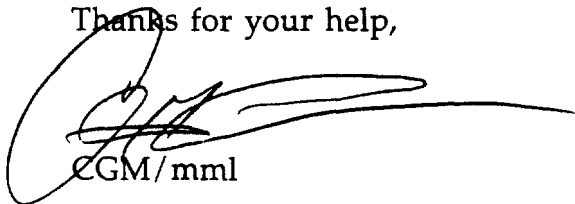
The FCC issued a Notice of Proposed Rulemaking, (NPRM) in October listing several options to address this issue. The most viable option and the one for which we are seeking your support, is the grant by the FCC of a right of first refusal to companies like ours to permit us to acquire our equivalent number in the 888 code. This would give proper protection to existing businesses which have built a strategy around the 800 number policies of the FCC. Other options seem to be of a more technical nature and would not take into full recognition the impact on business.

The beneficiaries of this right of first refusal are the consuming public; they will continue to be able to reach the companies they are seeking and with whom they want to do business. This right of first refusal will ensure the public is neither deceived nor confused as the new 888 code is implemented.

I am faxing you the comments we filed with the FCC as further background information on our position. The best way that you can help us is by sending a letter to the Commissioners of the FCC indicating your support for the right of first refusal in order to protect consumers and business entrepreneurs.

I would like to take this opportunity to thank you in advance for any help you can afford us on this matter, and please let me know if I can provide any further assistance.

Thanks for your help,



CGM/mml

**Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554**

<u>COMMISSIONERS</u>	<u>Telephone No.</u>	<u>Room No.</u>
Chairman Reed E. Hundt	202-418-1000	814
Commissioner James H. Quello	202-418-2000	802
Commissioner Andrew C. Barrett	202-481-2300	826
Commissioner Rachelle B. Chong	202-418-2200	844
Commissioner Susan Ness	202-418-2100	832

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Toll Free Service Access Codes

CC Docket No. 95-155

TO: The Commission

COMMENTS
1-800-FLOWERS

INTRODUCTION

1-800-FLOWERS is a business which did not exist before the Commission permitted the provision of 800 numbers. The Commission's 800 decision was an important communications policy decision and it has spawned many new businesses, improved the services and access of other businesses and created important benefits for the public which has enthusiastically embraced the convenience and new choices made available through 800 calling.

The Commission is to be commended for proposing initiatives in this proceeding to avoid harming consumers and those 800 business users which have built businesses and developed unique brands

around and in reliance upon the 800 number policy. The instant docket can develop an appropriate framework for the next generation of numbers, one which provides an ample supply of new numbers without compromising the businesses we have built and seek to continue to develop.

The 800 experience provides several consumer lessons, including the reality of consumer confusion, mistakes and deception in the public's use of 800 numbers. These lessons must be taken into account as the Commission implements the new 888 number plan.

The 800 experience also demonstrates that businesses can be, and have been, created and enhanced by the Commission's policies. Similarly, these businesses will be harmed if the introduction of the new number codes does not appropriately reflect their needs.

New jobs, new economic opportunities here and abroad, and new public choices and convenience are the products of the Commission's 800 policies and the industry's efforts to build businesses using this service. 1-800-FLOWERS fully expects that with appropriate Commission 888 policies, the 800 success story will continue and will be expanded upon by the new 888 service.

A BUSINESS USER'S PERSPECTIVE

1-800-FLOWERS is a business which was made possible by the creation of the 800 code. Prior to that time, we, as the founders of this company, ran a conventional florist business which began with one store and had grown into a 14 store operation. What that small retail business experience showed was that our customers were starved for time. They travelled; they worked hard; and they had real problems keeping up with personal gift needs. With the Commission's creation of 800 numbers, we recognized the opportunity to serve these customers, to give them the ability to reach a business they knew to have quality products and reliable service. 1-800-FLOWERS is the manifestation of that idea and opportunity.

Since 1987, 1-800-FLOWERS has devoted hard work and significant investment to build brand identity in the name and the association between the name, its quality and reliability and the toll free phone number. This florist and gift business has been built around this simple message and operating principle, and it has become a highly successful and well recognized brand. The 1-800-FLOWERS name and brand are the symbol of who the company is, what that business represents and how it can be reached. As new services have been introduced, from on line services to new retail stores, the linkage between the brand name and the phone number remains.

Today, the company employs 2,500 people (3,000 during holidays) across the country. With 1994 system-wide revenues exceeding \$200 million, 1-800-FLOWERS is a thriving and growing entrepreneurial undertaking. We expect to continue our business expansion and introduce exciting new products and services. Like any relatively new business, we have just begun to learn how we can meet customer needs.

This company is very grateful to the Commission. First, the Commission adopted policies to foster the 800 service availability. Today, the Commission appears, rightly, prepared to recognize the legitimate needs of 800 businesses which have made investments, established brands and developed customer expectations because of and wholly dependant upon Commission policy. These realities are extremely relevant to the Commission's deliberations concerning the new 888 access code, and beyond.

To assist the Commission's efforts, this company has reviewed the Commission's Notice of Proposed Rulemaking and has developed responses in those areas where it has a view or an opinion.

**A RIGHT OF FIRST REFUSAL IS THE BEST PROTECTION FOR
CONSUMERS AND 800 BUSINESSES**

1-800-FLOWERS believes that the right of first refusal is the best way for the Commission to afford the policy protection needed by 800 users such as this company. It will allow businesses to decide what is appropriate for themselves and their customers and to protect themselves against unfair competitive tactics. It also appears to be the least regulatory and litigious and the least burdensome for the carriers and the number administrators.

This company would exercise the right of first refusal if it were made available to us for several reasons. First, by using the corresponding 888 numbers, 1-800-FLOWERS will ensure that its customers will be able to reach the company. This ability to be reached by our customers while they become familiar with the new code will cut down on customer confusion and frustration. Second, "would-be" competitors will not be able to use the new access codes to unfairly compete with this company by siphoning its customers. This protection will help us and our customers, franchisees and affiliated florists, all of whom are harmed when our orders are received by other companies which our customers did not intend to reach. Third, 1-800-FLOWERS will be able to continue with its plans to grow its business in the future by developing new services.

Customer Confusion and Deception

Based upon the common experiences of many companies which have branded their 800 numbers, it is almost certain that customers will be confused during the introductory phase for the 888 access code. They will make mistakes, and they will misdial. It is equally certain that competitors of these 800 companies will exploit every opportunity given to them to take advantage of customer confusion to siphon off the customers of existing 800 companies.

In the administration of its 800-based business, 1-800-FLOWERS has had many communications from customers who have mistakenly reached other florist services when they intended to reach us but misdialed our number. One common mistake has been the substitution of a zero for the "O" (6 on the phone key pad) in "FLOWERS". After another florist service company obtained this misdial number, 1-800-FLOWERS customers reported reaching that company in error when attempting to reach 1-800-FLOWERS and that, unaware of their error, they had placed an order with the other company.

Frequently, 1-800-FLOWERS has learned about the mistake when the customer has called (correctly this time) to report a problem with the order, and of course 1-800-FLOWERS would not have a record of the order since it had not been placed here. This company places a high premium on its reputation for reliable, high quality service, and that reputation is imperiled when customers are diverted to competitors, and the customer is unaware of the fact

they are not dealing with 1-800-FLOWERS. In a situation where the competitor has less high standards, the customer's service experience with the competitor is attributed to 1-800-FLOWERS. Further, whether that service was good or bad, the customer's sales revenue unfairly enriches the competitor, who developed neither the market nor the customer's intention to place an order.

With the introduction of the 888 code, it is reasonable to expect that customers will be confused. Some may think that 800 numbers have been converted, and 1-800-FLOWERS believes that it is an important aspect of the customer education process for these calls to be answered, so our customers will not be confused and frustrated and can be advised that the 800 numbers are still in effect. 1-800-FLOWERS would like to use the 888 equivalents so it can be reached by these customers. By dealing directly with them, 1-800-FLOWERS believes it can further their educational process. This company believes that it would be best not to promote the 888 number as an alternative for 1-800-FLOWERS and to promote the 888 number for other, new services only when it has become clear that the public is familiar with the new codes.

1-800-FLOWERS wants to facilitate the smooth introduction of the 888 code. It also seeks the ability to prevent would-be competitors from taking unfair advantage of this transition and of the company's efforts to build a nationally and internationally known and trusted business.

This company does not intend to "warehouse" the 888 numbers it would receive under a right of first refusal policy. Rather, they can be used to support new florist services, such as a corporate focused service as distinct from retail, consumer based services.

In summary, this company's experience with customer confusion and misdialing and competitive opportunism, an experience shared by other 800 businesses, has led it to conclude that the only workable solution for the Commission in this proceeding is to give such 800 companies a right of first refusal to obtain their corresponding numbers in the 888 access code category. Assuming that the Commission agrees that such companies should be able to protect the businesses that have been built and the customers being served, then the appropriate inquiry is to address the rules to put in place to discourage frivolous use of this right.

Demand for Numbers Using the Right of First Refusal

The NPRM seems to suggest that a right of first refusal becomes a less desirable policy option as the number of potential businesses increases. As one user, we are not in a position to estimate the number of companies which would want to exercise this right. Given the likely adverse impact on certain businesses if this protection is not adopted, the Commission should explore ways to mitigate the usage volume situation, rather than consider rejecting the policy outright.

In the first place, this suggestion assumes that current 800 users have static number needs, that they would not be seeking new numbers in whatever code is available. For this company, at least, that is an incorrect assumption. As stated earlier in these comments, it is the company's intention to make use of the numbers assigned under the right of first refusal, and these would be numbers which the company would have sought in any event.

Next, the right of first refusal should be exercisable by those with the most at stake in their numbers. This should be measured by the rules adopted by the Commission, which would reflect the character of the 800 usage and hence the extent of the protection needed in the 888 code.

Appropriate Rules

The Commission should consider adopting rules which a company would be required to meet in order to exercise the right of first refusal. These requirements would discourage users which did not have a strong level of need and commitment from exercising the right. For example,

1. Users should be required to use the 888 number. In the case of 1-800-FLOWERS, as discussed above, initially the 888 number would be used to assist customers who misdial believing that 800 numbers had been changed or otherwise being confused by the new number system. The company would not promote 888 as an alternative

to 800 in its advertising and promotional materials in order not avoid adding to the possibility of customer confusion. The company would cooperate with the carriers' education program and supplement it as appropriate in its materials and actions. Any customers reaching 1-800 FLOWERS by using the 888 number equivalent would be advised that in the future they should return to using 1-800-FLOWERS.

At an appropriate, future time, when it was determined that customers and consumers generally had adapted to the new code's proper use, the company would use 888 numbers for new undertakings.

2. Users should not have this protection free of charge. Those who exercise a right of first refusal should be assessed a one time fee. The fee should be high enough to discourage hoarding or frivolous use and to compensate for the added costs of administering this right of first refusal allocation process. A value based fee would be an inappropriate tax on 800 users since the value in the 800 number (and in the 888 equivalent) has been created by the 800 company, not the carrier or the Commission. Competitive bidding is not a reasonable option and would be unworkable, since a right of first refusal would lead to only one eligible recipient.

Perhaps a fee could be based on usage, with 800 users having the greatest, and hence most efficient, call volume paying less

than those with light volumes. While some may suggest that the fee should be eliminated for some categories of recipients, this company believes that all users receiving numbers under this right of first refusal should pay some reasonable fee for this special status. This company does not have a specific suggestion of an amount or scale that would be appropriate, but it is willing to work with the Commission to develop an appropriate formulation.

Nor does this company have a specific suggestion regarding the recipient of these funds. Like administrative fees, the funds could help to defray the costs to administer the new 888 program or to increase the spending for consumer education.

Other 800 User Options

While 1-800-FLOWERS prefers the right of first refusal and plans to use its number equivalents, it is possible that some number of other business users may not desire this option but have concerns about how their corresponding 888 numbers are used. For such companies, the Commission may wish to consider permitting these numbers to be placed at the end of the assignment line. By deferring assignment in this way, the public will have time to adapt to the new numbering system, which should mitigate the harm which otherwise could occur.

This is not a desirable option for 1-800-FLOWERS because this company wants to be sure its customers' calls are answered at all

times after the new number system is introduced and that this company is the one answering its customers' calls. However, to the extent this "end of the line" option affords sufficient protection for certain 800 uses, it would reduce demand for numbers under the right of first refusal.

It has been suggested that 800 users needing protection of the equivalent 888 numbers could be protected by restricting the corresponding 888 numbers to users that would not be allowed to use that number in competition with the 800 business. 1-800-FLOWERS has strong reservations with the workability of such a restriction, and especially believes it is far inferior to the right of first refusal. As with the industrial classification proposal, this company believes a non-compete policy would place a heavy enforcement burden on the Commission and on the carriers, without effectively restricting competitors. Coupling it with the "end of the line" option may improve its viability, but not sufficiently to become an effective alternative to the right of first refusal.

Future Access Codes

It is premature to address the question whether this right of first refusal should apply to other new number codes when they are introduced. That decision should draw on the experience of the transition into the 888 code. For example, the Commission should assess how many numbers were assigned based on the right of first

refusal, how those companies assess that experience and the way they view the potential impact of a new code(s) on their customers and their businesses. If the Commission adopted the end of the line protections, then it would be useful to understand that experience, especially its impact on the administrative process and its effectiveness.

Also, it will be important to know how the public adapted to the 888 code. For example, were they unreasonably frustrated when misdials to 888 ended as unanswered calls or were routed to wrong parties, and what timeframe was needed to acclimate the public to the new 888 code. Lastly, it will be useful to know how the new code was used, and the extent to which 800 experience remained relevant.

**INDUSTRIAL CLASSIFICATION PROTECTION WOULD BE
UNWORKABLE AND DIFFICULT TO ENFORCE**

1-800-FLOWERS does not believe that code assignments based on industrial classification are workable. It does not seem to be possible to define and segregate competitors with clarity based on such designations, nor does not seem able to address changes in business goals after number are assigned. Hence it would not be a effective procedure in stemming the fraud about which 1-800-FLOWERS is very concerned.

The companies which have demonstrated their creativity in finding misdial and default numbers to siphon customers of 800 businesses will show equal creativity in avoiding and exploiting the faults in the classification system. 1-800-FLOWERS believes that without a right of first refusal the new code administration will experience severe fraud and questionable practices by competitors of 800 services.

Further, this option does not deal at all with the problem of customer mistakes and confusion. If a plumbing company gets a call intended for 1-800-FLOWERS, the customer may not have been deceived, but he or she will not be able to make the intended purchase. One has to question how much time the defaulting company will spend explaining the customers error. In other cases the customer may not even realize that the call was misdialed, for example if the call went unanswered or was put on hold for an extended time. This company would have a dissatisfied or lost customer, without even knowing that the mistake had occurred or being in any position to rectify the problem.

This option would plunge the Commission into a quagmire of categorization and enforcement matters, requiring resources, constant vigilance and prompt action when mistakes and deceptions occur. 1-800-FLOWERS questions that this is a desirable situation, especially with another, self-enforcing option available.